

NTSB Order No. EA-4849

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 31st day of July, 2000

Dockets SE-15251
and SE-15252

¹The initial decision is attached. Respondents, represented by the same counsel, filed largely identical briefs on appeal. The Administrator apparently felt constrained to file two briefs,

affirmed the orders of the Administrator revoking the respondents' airline transport pilot (ATP) certificates for making or causing to be made repeated intentionally false entries in flight and/or pilot logbooks, in violation of sections 43.12(a) and 61.59(a) of the Federal Aviation Regulations (FAR), and that this behavior demonstrated that they lacked the good moral character required of the holder of an ATP certificate under FAR section 61.153(c).² 14 C.F.R. Parts 43 and 61. As

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also substantially the same, in reply. Consolidated briefs would have been more appropriate in this consolidated case and a more judicious use of resources.

²The regulations state, in pertinent part:

§ 43.12 Maintenance records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

* * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part.

§61.153 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must:

* * * *

(c) Be of good moral character.

discussed below, we deny respondents' appeals and affirm the initial decision.

As to respondent Branum, the Administrator alleged in the revocation order (complaint) that:

2. At all relevant times herein, you were Director of Operations, a Captain, check airman and line check pilot for Target Airways[,] Ltd., doing business as Great American Airways (hereinafter, "GAA"), an air carrier conducting operations under Part 121.
3. As Director of Operations, you were responsible to the General Manager, Ken Damask, for all flight operations of GAA, including development and application of new flight operations policies and procedures.
4. From at least December of 1993 through April 13, 1997, you directed implementation of a policy of intentionally falsifying GAA flight logs by underreporting flight times flown in excess of 8.0 hours on GAA's passenger-carrying flights operated every Sunday and Thursday from Reno, NV (RNO), to Bellingham, WA (BLI), to Las Vegas, NV (LAS), to Bellingham, WA (BLI), to Reno, NV (RNO). [³]
5. On many occasions, GAA's flight logs were intentionally falsified in accordance with said policy.
6. You knew GAA flight logs were made, kept and used to show compliance with maintenance required under Part 43 of the FAR's.
7. From time to time, you intentionally falsified flight logs in accordance with said policy.
8. As a result of your making and causing to be made the intentionally false entries in GAA flight logs as alleged above, you have demonstrated that you lack the good moral character required of the holder of an Airline Transport Pilot Certificate.

The Administrator alleged the following in respondent Alford's revocation order (complaint):

³This was known as the Bellingham "Run" or "Turn."

2. Throughout the period from January 1, 1996 through April 13, 1997, you were a Captain for Target Airways, Ltd., [doing business as] Great American Airways ([hereinafter], "GAA").
3. From at least September 6, 1996, through January 15, 1997, you were intentionally falsifying your pilot logbook in that you were padding your pilot time shown in your personal logbook by adding time to flights and adding flights you did not fly.
4. From at least September 13, 1996, through January 18, 1997, you were intentionally falsifying GAA aircraft flight logs in that you were underreporting the turn around times of the following aircraft on the dates indicated:
 - a. Aircraft 750RA on September 13, 1996, time in shown as 5.5, time out as 4.8;
 - b. Aircraft 1075 on October 19, 1996, time in shown as 1.0, time out as 1.0;
 - c. Aircraft 1070 on October 28, 1996, time in shown as 5.9, time out as 6.0;
 - d. Aircraft 1070 on November 27, 1996, time in shown as 3.5, time out as 3.6;
 - e. Aircraft 870GA on December 4, 1996, time in shown as 18.3, time out as 18.4;
 - f. Aircraft 870GA on January 18, 1997, time in shown as 18.3, time out as 18.3.
5. GAA had a policy of underreporting flight times flown in excess of 8.0 hours on its passenger-carrying flights operated every Sunday and Thursday from Reno, NV (RNO), to Bellingham, WA (BLI), to Las Vegas, NV (LAS), to Bellingham, WA (BLI), to Reno, NV (RNO).
6. During at least March of 1996, and November of 1996, you followed said policy in that you intentionally falsified GAA aircraft flight logs to show the total flight time from RNO to BLI to LAS to BLI to RNO as 8.0 when the actual total flight time was greater than that, to wit:
 - a. March 3-4, 1996, your total flight time was 8.7 hours;
 - b. November 3-4, 1996, your total flight time was 8.9;
 - c. November 10-11, 1996, your total flight time was 8.6; and
 - d. November 28-29, 1996, your total flight time was 8.9.

7. The GAA flight logs were made, kept and used to show compliance with maintenance required under Part 43 of the FAR's.
8. As a result of your making the intentionally false entries in your personal pilot logbook and GAA flight logs as alleged above, you have demonstrated that you lack the good moral character required of the holder of an Airline Transport Pilot Certificate.

The law judge found that the Administrator proved all the allegations by a preponderance of the evidence except the charge that respondent Branum had himself falsified GAA logbooks (paragraph 7). He further found that the preponderant evidence supported the revocation of both respondents' ATP certificates.

On appeal, respondents assert that 1) the law judge erred in crediting the statements of witnesses who did not testify in person at the hearing and thus were not subject to cross-examination; 2) the Administrator failed to prove that either respondent intended to falsify any pertinent document; and 3) the respondents were denied due process.

The central issue in this case is whether or not GAA had a policy, promoted by respondent Branum and followed by respondent Alford, of encouraging pilots to shave time off their reported block time for the Bellingham run to ensure that the total time did not exceed eight hours.⁴

⁴For example, one witness who had been a DC-9 first officer for GAA for two years testified that she overheard a conversation between respondent Branum and the GAA chief pilot discussing the practice.

The law judge thoroughly reviewed the evidence in the initial decision and we need not repeat his work here. His factual findings are well-reasoned and we adopt them as our own. He concisely explained that he gives the most weight to live testimony, then to depositions, then sworn statements given under penalty of perjury, and lastly, to unsworn statements. (Transcript (Tr.) at 665-66.)

Respondents attack the "reliability and probativeness" of much of the testimony and evidence introduced by the Administrator. They assert that too much of the Administrator's case relied on hearsay, which should not be permitted "when a livelihood is at stake." (Respondents' briefs, both at page 9.) They cite, for example, FAA Inspector Jestice's testimony regarding the content of conversations that he had with GAA's payroll supervisor about information contained in the crew detail reports. Respondents claim that the person who filled out the reports

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[They said] we needed to keep the flights to eight hours because if we didn't the Feds would ask us to break the flight in Las Vegas and then we would all be the losers because we would only be able to log four hours and we'd still spend almost as much time by the time we had to then deadhead back to Reno to finish the day...

(Tr. at 19-20.) This concern was voiced in a GAA memo found in respondent Branum's office. (Exhibit (Ex.) C-7.)

Other witnesses relayed that there also was a concern at GAA when a pilot exceeded eight hours if that same pilot had a flight scheduled for the next day, presumably because the crew would then be unavailable to fly until they had rested for the appropriate time. (Tr. at 69-70, 79-80; Ex. C-2 at 58-59.)

should have testified and, since she did not, the admission of the information through Inspector Jestice was unfair.⁵

Hearsay evidence is admissible in Board proceedings.⁶ 49 C.F.R. § 821.38. The law judge took into account the fact that such evidence was not subject to cross-examination. The Administrator was not required to have the payroll supervisor testify; she was only required to prove the allegations by a preponderance of the reliable evidence. The hearsay evidence, taken in conjunction with all the other testimony and documentary evidence, provided the law judge with an adequate basis to support his findings. Respondents were free to rebut that evidence as they saw fit. They have presented us with no reason to disturb the law judge's conclusions.

⁵We note that respondents could have taken the deposition of, or sent a subpoena to appear at the hearing to, the payroll supervisor, or the former GAA pilot who had been deposed in the GAA case, or the former GAA pilot who gave a sworn statement to an FAA inspector.

⁶We have addressed challenges to the admission of hearsay evidence before. For example, in Administrator v. Aarvik, NTSB Order No. EA-4640 (1998), we found unpersuasive a respondent's argument that certain evidence was inherently incredible or that the Administrator should have been barred from relying on hearsay when other evidence may have been available. We stated, "[t]he proffered evidence was relevant and satisfied the criteria for admissibility, and it was incumbent on respondent to introduce any evidence he believed to be more probative." Id. at 3. See also Administrator v. Tsegaye, NTSB Order No. EA-4205 at 7, n.9 (1994), and cases cited therein. The same reasoning may be applied to the instant case.

As hearsay is admissible, respondents' claims that the admissions denied them the opportunity to cross-examine the witnesses against them is unavailing.

To the extent respondents argue that the law judge should have believed their testimony over that of the Administrator's witnesses, it is a credibility assessment which, unless arbitrary, capricious, or not in accordance with law, we will not overturn. Administrator v. Smith, 5 NTSB 1560, 1563 (1987). The law judge carefully discussed all the testimony and articulated sound reasons for his credibility determinations.⁷ He was in the best position to assess the demeanor of the witnesses as they testified. The law judge's credibility decisions "are not vulnerable to reversal on appeal simply because respondent believes that more probable explanations ... were put forth...." Administrator v. Klock, 6 NTSB 1530, 1531 (1989).

Respondents further claim that the law judge erred by refusing to take judicial notice of a final order adopted by the Administrator pursuant to a settlement agreement in a separate revocation case against GAA: specifically, that GAA flight and duty records were not accurate. Thus, respondents continue, the Administrator should not have been permitted to rely on those documents to prove her case. As

⁷Among the witnesses who testified for the Administrator at the hearing were three former employees of GAA: a DC-9 first officer, the former operations manager, and a flight attendant who worked on the Bellingham run for about five years. Respondents attack their motives and trustworthiness. These are factors, however, that the law judge already took into account and which they had an opportunity to explore through cross-examination. Respondents both testified and submitted unsworn statements from former GAA pilots. They offered no other witnesses.

the Administrator points out, however, she did not enter the flight and duty time records into evidence.⁸ Instead, she relied on the crew detail reports, or payroll records. Therefore, the law judge did not err when he determined that the final order reached by settlement in the GAA case was not relevant to the complaints against respondents.

Respondent Alford argues that there was insufficient evidence produced at the hearing to show that he kept his personal logbook as a means to show compliance with the FAR. He claimed that company records, not his logbook, were the records he kept to comply with the FAR. This argument appears disingenuous, as he testified that he updated his logbook, albeit infrequently, from information contained on various scraps of paper, schedules, and pay stubs, then discarded the papers. (Tr. at 466, 520.) Thus, information of the type contained in his logbook was kept in no other central place.

More importantly, when asked by FAA Aviation Safety Inspector John Thorpe, the principal operations inspector for GAA, to produce a record of his flight time, respondent Alford submitted his personal logbook (replete with changes made over white-out on the Bellingham turn entries).⁹

⁸Even if the Administrator had chosen to rely on these documents, there would have been no error. The documents were probative *because* they were false.

⁹Respondent had later been asked again by the Administrator to produce his logbook, but he said he could not because it had been lost or stolen. At the hearing, he testified that it had

Respondent testified that he signed every page of the logbook that he presented to Mr. Thorpe certifying that the statements made on the form were true and correct. (Tr. at 517-18.) The inspector had requested of respondent Alford his personal pilot logbook or other reliable record of his flight time from January 1, 1996 to March 25, 1997.¹⁰ He testified that there were 29 Bellingham runs logged in Mr. Alford's book and that there were 58 white-out entries, all on Bellingham runs. (Tr. at 207-08.) At least 20 of the Bellingham entries totaled exactly eight hours and were exactly the same time on each leg (respondent did not dispute this), something Inspector Thorpe thought was very unusual. (Tr. at 207-08, 528.)

Again, the law judge made a credibility assessment: respondent Alford claimed that he kept the logbook for no specific purpose, never intended anyone to rely on it, and never intended it to be accurate.¹¹ The law judge found

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recently been found, but he had not brought the logbook with him to the hearing. (Tr. at 509-10.)

¹⁰Nonetheless, FAR section 61.51 requires each pilot to document and record training and aeronautical experience, "in a manner acceptable to the Administrator," for various purposes, including to satisfy the recent flight experience requirements of Part 61. The logbook or other reliable record must be produced for inspection upon a reasonable request by the Administrator. 14 C.F.R. § 61.51(i).

¹¹He testified that, in filling out his logbook, he sometimes took an "educated guess," but did not intentionally falsify. (Tr. at 468.) Yet, he also testified that in applying for a position with Air Jamaica, he showed copies of his personal logbook to indicate his pilot experience and admitted that he

this explanation incredible and we cannot disagree.¹²

Respondents also assert that any intentional falsification found in this case does not rise to the level that would support a finding of lack of good moral character and that, further, since good moral character is undefined in the FAR, it is unfair to hold them to an undefined standard. Again, we disagree. The law judge found that respondent Branum, as Director of Operations, encouraged the practice of GAA pilots entering false information into flight logs but still getting paid for actual block time.

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used the logbook to show compliance with the FAR. (Tr. at 515, 525.)

We have addressed the materiality of logbooks or other reliable records before. In Administrator v. McCarthney, 7 NTSB 670 (1990), affirmed 954 F.2d 1147 (6th Cir. 1992), we stated,

[A]ll flight time recorded in the logbook (or other "reliable" record) an airman is required to keep ... is material information because it is important to determinations respecting the airman's currency and qualifications and his future entitlement to additional ratings and certificates. The materiality of such flight time is thus a function of its placement in a logbook that has been or will be produced for inspection by the Administrator on reasonable request; it is not immaterial simply because the airmen did not have to log it.

See also Administrator v. Cranford, 5 NTSB 343, 346 (1985) ("[T]he maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability and accuracy of the records and documents presented to the FAA to demonstrate qualification").

¹²Intentional falsification may be proved (and ordinarily is) by circumstantial evidence. See, e.g., Administrator v. Gusek and Erie Airways, Inc., NTSB Order No. EA-4745 at 5 (1999).

Respondent Branum, because of his position, caused numerous false entries to be made into GAA records, including those utilized to determine when routine maintenance was required on an aircraft, thereby creating a potentially dangerous situation for GAA's paying passengers, who would have expected, and been entitled, to receive service that met the standards of Part 121. The law judge also found that respondent Alford repeatedly entered false information in GAA flight logs and his own personal logbook. He surrendered his logbook to the FAA with numerous changes to Bellingham-run entries and logged pilot-in-command time when he did not operate the aircraft. He signed, certifying their accuracy, logbook pages which contained entries that even he admitted were "guesses." Both respondents were involved, one way or another, in a recurrent, concerted effort to keep reported block time for the Bellingham run at or below eight hours while allowing compensation for the actual time. This circumvention of air safety procedures affected the accuracy of records for maintenance and pilot rest purposes. Under these circumstances, there is sufficient evidence to support a finding that respondents lack the good moral character required of the holder of an ATP certificate.¹³

¹³A lack of good moral character by the holder of an ATP has been found in a variety of cases, including intentional falsification. We have found that a sustained section 61.59(a) charge is enough to support a finding of a lack of good moral character required of an ATP. See, e.g., Administrator v. Van

Finally, as to sanction, Board precedent is clear that revocation may be supported by even one instance of intentional falsification.¹⁴ See McCarthy, 7 NTSB at 672.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeals are denied;
2. The initial decision is affirmed; and
3. The revocation of respondents' ATP certificates shall begin 30 days after the service date indicated on this opinion and order.¹⁵

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

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Eaton, NTSB Order No. EA-4435 at 9 (1996).

¹⁴All other arguments made by respondents, whether or not discussed herein, were thoroughly considered and rejected.

¹⁵For the purpose of this order, respondents must physically surrender their certificates to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).